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8

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**
12
13

14 In re
15 CRESTLLOYD, LLC,
16 Debtor.

Case No. 2:21-bk-18205-DS

Chapter 11

17 **REPLY TO INFERNO INVESTMENT,**
18 **INC.'S OPPOSITION TO DEBTOR'S**
19 **SECOND MOTION FOR AUTHORITY**
20 **TO DISBURSE FUNDS TO HANKEY**
21 **CAPITAL, LLC; MEMORANDUM OF**
22 **POINTS AND AUTHORITIES**

23 Hearing

24 Date: August 28, 2025
Time: 1:00 p.m.
Place: Courtroom 1639
25 255 E. Temple Street
Los Angeles, CA 90012
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1 Crestlloyd LLC, the debtor and debtor in possession in the above captioned chapter 11
2 bankruptcy case (“Crestlloyd” or the “Debtor”), hereby submits the following reply brief to the
3 opposition (the “Opposition”) [ECF No. 640] filed by Plaintiff Inferno Investment Inc. (“Inferno”)
4 opposition to the Debtor’s Second Motion for Authority to Disburse Funds to Hankey Capital LLC
5 (the “Motion”) [ECF No. 635], as follows:

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Inferno, in its Opposition, tries to recharacterize the Debtor’s Motion as a “cash collateral”
9 motion. It is not. It is a Motion to distribute estate property pursuant to 11 U.S.C. § 363(b). By its
10 very terms, the Motion seeks to distribute funds held by the Debtor to Hankey Capital LLC
11 (“Hankey”), which claims to be the senior secured creditor. The purpose of doing so is to eliminate
12 the accrual of further interest to Hankey’s First Note. That way, *if* debt owing to Hankey pursuant
13 to the Hankey Second Note or Hankey Third Note is found to be behind one of the other secured
14 creditors (such as Inferno, or Yogi Securities Holdings, LLC (“Yogi”), or Hilldun Corporation
15 (“Hilldun”)), then there will be more funds for those available to those other parties.¹

16 Inferno’s conclusory statement that the Motion was procedurally defective is incorrect.
17 Other than that, Inferno apparently had no other points to make, because Inferno tries to state that
18 there is no adequate protection for Inferno, but provides no evidence in favor of this statement.
19 Contrary to Inferno’s statements, there is evidence before the Court that Inferno is adequately
20 protected. The Court previously ordered, *inter alia*, the following concerning the first payment of
21 \$82,000,000 to Hankey on May 27, 2022:

22 “The Payment will be without prejudice to any and all parties’ rights to
23 assert claims and defenses as may be appropriate, **including but not limited**
24 **to the right to claw back any portion of the monies paid.**”

25 See ECF No. 350 (the “First Disbursement Order”) (emphasis added). At that point in time,
26 Hankey’s First Note was accruing interest in the amount of \$36,666 **per day**. The interest since

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28 ¹ This assumes, that either Inferno or Yogi are successful in their adversary proceedings.

1 then is still significant, as Hankey's First Note continues to accrue interest the amount of \$8,586.13
2 per day, or approximately \$248,998 to \$266,170 per month.

3 Debtor is currently earning interest on the funds held, but the bank interest being paid to
4 Debtor pales in comparison to what Hankey's First Note is accruing: Debtor is earning
5 approximately 3% interest on the funds being held, to the tune of about \$106,000 per month.² (See
6 e.g. ECF No. 644, Debtor's Monthly Operating Report for July 2025). This means that Hankey's
7 First Note is earning more than twice as much as what Debtor can earn on those funds per month.

8 In fact, it remains a mystery why Inferno is objecting at all. Inferno stated the following in
9 its objection to the First Disbursement Order:

10 "Because of these issues, when Inferno informed counsel for Crestlloyd that
11 it would consent to the payment to Hankey of \$82.5 million, it was expressly
12 conditioned upon the order providing that the payment is without prejudice
13 to the rights of any party to contest Hankey Capital's right to receive that
14 payment, to contest the validity of Hankey Capital's claim or the priority of
15 its lien, or **to seek and obtain disgorgement of any portion of those funds**
16 **that a court may determine Hankey Capital should not have received.**"

17 (See ECF No. 337 at p. 3). As shown above, the Court's First Disbursement Order included that
18 language. The First Disbursement Order continues to adequately protect Inferno's interest, as well
19 as the interest of Yogi and Hildun, and the remainder of the Estate's creditors. Inferno ignores this
20 in its Opposition.

21 Equivalent, if not stronger wording concerning a clawback of funds is including in the order
22 relating to the instant Motion. Hankey has not objected. Tellingly, none of the other parties to
23 adversary proceedings objected either. That is because it is extremely apparent from the record
24 before this Court that the rest of the parties have ample protection if the Court allows Debtor to
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27 ² Debtor is of course limited in what it can do with these funds; Debtor that this return in the form
28 of bank interest is the best return Debtor can obtain while (1) ensuring that the funds on hand are
not put at risk to market fluctuations while also (2) keeping the funds readily liquid.

1 distribute funds to Hankey. Hankey, as the Court knows, was already approved as the DIP lender
2 in this bankruptcy. (*See* ECF Nos. 66 and 70). Hankey is a prominent member of the Los Angeles
3 business community,³ and is subject to this Court’s jurisdiction. It is hard to envision what better
4 adequate protection there may be under the circumstances.

5 Accordingly, Debtor respectfully posits that (1) under either the “business judgment
6 standard” for motions brought under 11 USC §363(b), or (2) under the “adequate protection”
7 standard under 11 USC §361, the Motion makes logical sense, and should be granted.

8 **II. THE COURT SHOULD GRANT THE MOTION**

9 **A. It Matters Not Whether The Motion Is For Disbursement Of Estate Property**
10 **Or For Cash Collateral Because The Motion Is The Best Course Of Action To**
11 **Preserve Property OF the Estate For All Prospective Debtors**

12 Call it what you want to call it, the Motion’s purpose is to distribute cash to Hankey because
13 of the interest accruing on Hankey’s First Note, and the damage that could do to other creditors of
14 the Debtor.

15 Debtor maintains it is clear that the instant Motion is allowed pursuant to 11 U.S.C. §
16 363(b)(1), because it is a disbursement that will maximize value to the estate. (*Czyzewski v. Jevic*
17 *Holding Corporation*, 137 S. Ct. 973, 978 (2017) (applying the business judgment standard). There
18 is not much Debtor can do with the funds it is holding that would allow Debtor to (a) earn a greater
19 return than what interest is accruing under Hankey’s First Note (at the rate of approximately 8%);
20 while also (b) satisfying all creditors of the Debtor at the same time. In other words, the Debtor
21 could not practically hope to achieve a greater turn than the approximate 3 – 4% that Debtor is
22 earning by holding its funds in a savings account at a chartered bank. Paying down Hankey’s First
23 Note, and eliminating the accrual of interest, is the only practical way that Debtor can hope to
24 maximize estate value.

25 _____
26 ³ There are multiple news articles about Hankey’s principal, Don Hankey’s real estate development
27 loans in the Los Angeles area; the LA Times has described him as a “Los Angeles multimillionaire”
28 who has helped bankroll significant developments in the Los Angeles area. See e.g.
<https://www.latimes.com/business/la-fi-circa-dtla-apartments-20181005-story.html>

1 At present, Hankey's First Note earns interest, at minimum, of approximately \$248,000 per
2 month. At best, Debtor can earn interest of approximately \$106,000 per month. (*See* ECF No. 644).
3 Assuming that Hankey is found to be in first position (but that the *entire* debt due to Hankey is not
4 found to be in first position), then that represents a loss to the other creditors in the amount of
5 approximately \$142,000 per month, **or \$1,704,000 per year.**⁴

6 This figure is significant. Debtor respectfully posits that the Motion should therefore be
7 granted because it is in accordance with the best business judgment that the Debtor can make.

8 But, even assuming *arguendo* that Inferno were correct and the Motion is one for use of cash
9 collateral, it matters not, because Inferno, Yogi, and Hilddun are all more than adequately protected,
10 as explained in detail below.

11 **B. Inferno Remains Adequately Protected**

12 To provide "adequate protection," under 11 USC §361, a debtor in possession may give the
13 creditor any of the following (a) a cash payment or periodic cash payments; (b) an additional or
14 replacement lien; or (c) other relief that will result in the creditor receiving the "indubitable
15 equivalent" of the creditor's interest in the property.

16 Adequate protection may be provided by giving the lienholder any other relief that will
17 enable the lienholder to realize the "indubitable equivalent" of its interest. (11 USC § 361; *see In*
18 *re Sheehan*, 38 B.R. 859, 864 (D.S.D.1984) *see also In re Murel Holding Corp.* 75 F2d 941, 942
19 (2nd Cir. 1935)).

20 This is exactly what was provided the first time to all of the potentially secured creditors,
21 and what is being provided now. The Court's prior order already noted that the funds disbursed are
22 subject to a possible claw back. [*See* ECF 350]. That First Disbursement Order approved the
23 Debtor's payment of Hankey in the amount of \$82,500,000.00. The First Disbursement Order had
24

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26 ⁴ Unless the parties to Inferno's adversary proceedings are able to resolve their disputes, there is a
27 real threat of further loss. The dispositive motion cut off is over 13 months from now and there is
28 no trial date yet set. Assuming the dispute continues for another 18 months or more, that would
mean an **erosion of value of over \$2,556,000.**

1 specific language in it to address Inferno’s objection.⁵ This figure dwarfs the amount Inferno claims
2 it is owed: \$9,982,737.09 unsecured, plus interest, per Inferno’s Proof of Claim No. 10, and
3 \$20,902,106.12 secured, plus interest, per Inferno’s Proof of Claim No. 11. That approximately
4 \$30,000,000 in debt allegedly owed to Inferno is less than half of the first disbursement made to
5 Hankey, (in the amount of \$82,500,000). The question thus is, what changed between the First
6 Disbursement Order and now? Debtor respectfully posits that nothing has materially changed, and
7 Inferno remains adequately protected.

8 By allowing the Debtor to pay off Hankey’s First Note, the Debtor will be able to maximize
9 the value of its bankruptcy estate while at the same time preserving value for creditors that might
10 be junior to the First Hankey Note but senior to the Second Hankey Note and the Third Hankey
11 Note. All of the Creditors remain adequately protected given the language in the First Disbursement
12 Order, the language in the Proposed Order relating to this Motion, and the facts and circumstances
13 relating to Hankey’s ability to return those funds if necessary. Once Hankey is paid all amounts
14 owing with respect to the First Hankey Note, except for fees and costs, interest on such note will
15 cease to accrue and the remaining proceeds will be made available to the holder of claims having
16 priority as determined by the Court. This, in and of itself, is the best protection all the creditors
17 could hope for.

18 **III. CONCLUSION**

19 WHEREFORE, the Debtor respectfully requests that this Court grant the Motion and enter
20 an order:

- 21 (1) authorizing the Debtor to pay Hankey **\$28,635,972.63**, plus interest accruing up until
22 the disbursement is made in the amount of \$8,586.13 per day;
- 23 (2) requiring Hankey to return any distribution to the extent the Court determines that its
24 claim is not secured or junior to other claims having priority; and

25
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27 ⁵ Notably, at that time, Inferno did not object to the form of the Motion as being one for “cash
28 collateral” as opposed to a disbursement. (See ECF No. 337). Again, Debtor believes this is a
distinction without meaning in this context.

(3) affording such further and other relief as is warranted under the circumstances.

Dated: August 25, 2025

LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.

By: /s/ Joseph M. Rothberg

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Attorneys for Debtor and Debtor in Possession

Crestlloyd LLC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2818 La Cienega Avenue, Los Angeles, CA 90034

A true and correct copy of the foregoing document entitled **Reply To Inferno Investment, Inc.'S Opposition To Debtor's Second Motion For Authority To Disburse Funds To Hankey Capital, Llc; Memorandum Of Points And Authorities** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **August 25, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY UNITED STATES MAIL: On **August 25, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **August 25, 2025**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

None.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

August 25, 2025
Date

Rebecka Merritt
Type Name

/s/ Rebecka Merritt
Signature

In re Crestlloyd, LLC
RSN
File No. 9562

Request for Special Notice

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Request for Special Notice

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